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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/554,167	07/11/2000	THIERRY GICQUEL	72211/9011	6758

7590 08/05/2004

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EXAMINER

PADMANABHAN, KARTIC

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/554,167

Applicant(s)

GICQUEL ET AL.

Examiner

Kartic Padmanabhan

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 6-11 and 15.

Claim(s) objected to: _____.

Claim(s) rejected: 16,17,19-21 and 23.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Christopher L. Chin
CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP 1800-1641

Continuation of 5. does NOT place the application in condition for allowance because: of reasons set forth in the previous office action. Applicant argues that the Zavislan reference teaches a spectrophotometer for the measurement of optical density or spectral adsorption, unlike the present invention that measures chemiluminescence. However, Zavislan was only relied upon for teaching an opaque cover directly pressed against a sample cuvette, and as a secondary reference under 35 USC 103, it is not required to teach all the limitations of the claims, as the other limitations have been taught by the combination of Uzan, Berthold, Smethers, and Honzawa. While applicant may be correct in asserting that Zavislan does not form a temporary dark chamber, it is noted that the combination of references cited above does teach that limitation, and Zavislan only need teach an opaque cover. Further, while applicant may also be correct in asserting that Zavislan allows light to pass through the cuvette, the opaque cover still performs the function of excluding external light from entering the cuvette. As such, by combining the opaque cover of Zavislan with the other references, one arrives at the claimed invention. Further, one would have been motivated to use the opaque cover of Zavislan because it ensures the elimination of unwanted light (light other than that from the excitation source) from passing through the sample.